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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 997

ANTOINETTE COVIELLO,

Petitioner,

vs.

NEW YORK CENTRAL RAILROAD COMPANY, A BODY CORPORATE.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY AND BRIEF IN SUPPORT THEREOF.

EDWARD A. MARKLEY,
Counsel for Petitioner.

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PETITION FOR WRIT OF CERTIORARI TO THE NEW JERSEY COURT OF ERRORS AND APPEALS.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Antoinette Coviello, respectfully presents this petition for a writ of certiorari to review the final judgment of the New Jersey Court of Errors and Appeals, the highest Court of the State of New Jersey in which a decision in the above entitled cause could be had, rendered January 9, 1942 (R. 105).

Summary of the Matter Involved.

Antoinette Coviello, as widow and sole dependent of Giuseppe Coviello, filed a petition for compensation in the Workmen's Compensation Bureau of the New Jersey Department of Labor, against the New York Central Railroad Company (R. 6-8). This Bureau dismissed the petition on the ground that Giuseppe Coviello at the time of the accident was engaged in work of interstate transportation and

because of the Federal Employers' Liability Act (45 U. S. C. A., Sec. 51, p. 92) the New Jersey Compensation Act (R. S. of N. J., Title 34, Chap. 15-18) could not afford a remedy (R. 79-81). The Hudson County Court of Common Pleas, on appeal, reversed the Bureau, and holding that Giuseppe Coviello was engaged in work of an intrastate character, awarded compensation under the New Jersey Statute (R. 91-94). The New Jersey Supreme Court affirmed the judgment of the Court of Common Pleas (R. 94-96). The New Jersey Court of Errors and Appeals reversed the judgment of the Supreme Court by a vote of 7 to 6. A re-argument was allowed by the New Jersey Court of Errors and Appeals, but that Court by the same vote of 7 to 6, adhered to its former ruling (R. 104-104A).

The facts are not in dispute and as found by the New Jersey courts are briefly as follows (R. 91-92): Giuseppe Coviello for a number of years prior to his death on November 10, 1936, was employed by the New York Central Railroad Company as a laborer. His duties were to oil and grease the switches, as well as clean and replenish the oil in the switch lamps on the tracks of the railroad in its freight yard located at Weehawken, New Jersey. On certain days his work was the greasing and oiling of the switches, and on certain other days, of which November 10, 1936, was one, his work was the cleaning and replenishing of oil in the switch lamps. The Weehawken Yard of the railroad where Coviello performed the work above described, was used as a classification yard almost entirely, if not exclusively, for the movement and classification of freight cars, loaded and empty, moving in transportation between the several states of the United States. Some time between 3 and 4:30 on the afternoon of November 10, 1936, Coviello suspended his work of filling and cleaning the switch lamps to go to a toilet located on a float bridge adjacent to the yard. He slipped and fell into the water and was drowned.

Jurisdiction.

The basis upon which it is contended that this Court has jurisdiction to review the judgment of the New Jersey Court of Errors and Appeals in this cause is Section 237-(b) of the Judicial Code, as amended (U. S. C. A., Title 28, Section 344-(b)).

The New Jersey Court of Errors and Appeals erroneously granted an immunity claimed by the New York Central Railroad Company under the Federal Employers' Liability Act (U. S. C. A., Title 45, Section 51), when it held that Giuseppe Coviello was engaged in interstate transportation and because of that Federal Statute the New Jersey courts were deprived of jurisdiction to award compensation otherwise payable by State law.

Questions Presented.

1. Whether under the undisputed facts, Giuseppe Coviello at the time he met his death was or was not engaged in interstate transportation within the meaning of the Federal Employers' Liability Act.

Reasons Relied On for the Allowance of the Writ.

The decision of the New Jersey Court of Errors and Appeals that Giuseppe Coviello was engaged in interstate transportation at the time of his death is a Federal question of substance, decided in a way probably not in accord with the applicable decisions of this Court (Rule 38-5-a).

WHEREFORE your petitioner respectfully prays that a writ of certiorari issue to the New Jersey Court of Errors and Appeals and submits hereto annexed brief in support of this petition.

Respectfully submitted,

EDWARD A. MARKLEY,
Attorney for Petitioner.